MOTION FILED
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NO. 93-7927

In the
Supreme Court of the United States
OCTOBER TERM, 1994

CURTIS LEE KYLES,
Petitioner,

versus

JOHN P. WHITLEY,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF

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MOTION TO FILE SUPPLEMENTAL BRIEF AND SUPPLEMENTAL BRIEF

Petitioner, Curtis Lee Kyles, respectfully requests leave pursuant to Supreme Court Rule 25.5 to file the Supplemental Brief set forth below.

SUPPLEMENTAL BRIEF

We file this supplemental brief to call the Court's attention to the importance of its reviewing the record for itself. A single example suffices to make the point; more would burden the Court by rehashing the briefs.

The last two questions asked by the Court during oral argument in this case and Respondent's answers are as follows:

QUESTION:	But of course, the prosecutor argued that he [Beanie] wasn't even there [at Kyle's home] on Sunday when they knew he was, if I remember ...
MR. PEEBLES:	Well, I don't think the prosecutor knew that as a fact.
QUESTION:	The police knew he was. This is another thing the police didn't tell the prosecutor.
MR. PEEBLES:	The police said that they — the police contact with this man was Detective Miller, and Detective

> Miller didn't even inform his — the principal homicide detective in this case of most of the things that he did with this informant.

When the prosecutor argued at trial that Beanie was not at the Kyles home on Sunday, the prosecutor knew as a fact that Beanie was at the Kyles home on Sunday. Assistant District Attorney Cliff Strider's handwritten notes of his pretrial interview with Beanie Wallace show that Beanie told Strider about two trips Beanie made to the Kyles home on Sunday. JA 262. Strider knew that Beanie went to Kyle's on Sunday at the request of Beanie's Police Department contact, "Miss Williams" (*see* JA 261), who "asked" Beanie to "find out about the gun." JA 262. Strider knew that, 30 minutes after the second visit, Beanie met Detective John Miller, who again "asked about [the] gun." JA 262. Strider knew that Beanie was in the Kyle's kitchen (where the gun was later found), possibly alone. *See* JA 262 (Beanie's statement that he went to the kitchen to eat, "B[eanie] first, then rest of guys").

In the postconviction hearing, Assistant District Attorney Strider testified that he asked Chief Detective John Dillman (the principal homicide detective) about the contents of Beanie's conversations with Detective Miller, that Dillman knew the substance of those conversations, and that Dillman carefully described the conversations to Strider.[1]

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[1] *See, e.g.*, H 2/20 104 (testimony of Strider: "I do remember asking Det. Dillman 'what did Beanie have to say, what was the conversation Beanie had with Johnny Miller, what was the content of that?' And he told me what the content was . . . "); H 2/20 109 (Strider: "Det. Dillman is a very diligent officer . . . . He would tell me everything in his file. . . . I'm sure

WHEREFORE, Petitioner respectfully requests that this Court grant leave to file this Supplemental Brief.

Respectfully submitted,

By: _____

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footnote 1 continued

he did listen to the tape [of Beanie's conversation with Detective Miller],"); H 2/20 103 ("I spoke to Detective John Dillman, and he told me the details. That's how I prepared myself was through Detective Dillman.") *See also* H 2/20 108, 113, 121, 137 (testimony of Strider); H 3/1 7-8, 13, 16, 17 (testimony of Assistant District Attorney Williams).